



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED

Case to Manager, EO Determinations - Cincinnati

DATE: \_\_\_\_\_

SURNAME: \_\_\_\_\_

Date: NOV 20 2001

Contact Person: \_\_\_\_\_

Identification Number: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Employer Identification Number: \_\_\_\_\_

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of \_\_\_\_\_ on \_\_\_\_\_. Your Articles of Incorporation provide that you are "organized and shall be operated as a non-profit corporation solely and exclusively for charitable, educational and scientific purposes, and specifically for the operation of an Internet web site for the purpose of providing public service information to consumers on products and services available over the internet and in their local city." The articles further provide that "...the non-profit organization intends to operate an Internet web site known as \_\_\_\_\_ for purposes of educating and providing public service information to the public, at no charge, as to products and services available over the Internet, primarily from the \_\_\_\_\_ market."

You describe yourself as "The Consumer Connection", bringing together local consumers in the buying process and suppliers of the product or service that the particular consumer/buyer is seeking. You have further described the benefits of your services to consumers as follows: "save time, effort, money...mistakes; get free consumer help services; find the best of what they want; enjoy fast & easy smart-shopping". Your benefits to suppliers: "connect directly with real buyers; be seen as a consumer resource; way to create client relationships; get in on new way to make sales."

You have stated that your primary source of financial support will be from Program Service Revenue received from service sponsors plus contributions from the general public. You state that at this time, you are not attempting to sign up service sponsors until you raise your initial operating funds from public donors which include wealthy individuals, corporations, and possibly foundations.

Once your initial funding is in place, you will be looking for service sponsors to fund your operations. These will be businesses in the local area that want to connect with local consumers

who are in the process of making a purchase. For example, if a consumer needs a new mower or has a legal or medical problem, you will provide them with background information to assist them in asking the right question, and then offer them a private and confidential connection through your web site where they can question the service sponsors that have agreed to provide consumers with information and prices, etc. Service sponsors will pay a small fee to be plugged into this consumer loop, which will be used to maintain and upgrade your free consumer internet service.

You have urged potential suppliers to act now to join your consumer network as a community sponsor since only a selected number of suppliers will be in each product or service category and the first participating sponsors to join will secure the best positions.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(d)(1)(II) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in its generally accepted legal sense and includes relief of the poor and distressed and promotion of social welfare through charitable activities.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3), although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513 of the Code.

Section 511(a) of the Code imposes a tax on the unrelated business taxable income of every organization described in sections 401(a) and 501(c).

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501, with certain exceptions not here relevant.

Section 1.513-1(b) of the regulations provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. It is further provided that activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as a trade or business merely because they are carried on within a larger complex of other endeavors which may, or may not be related to the

exempt purpose of the organization.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau v. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), affg. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 969 (1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

In order to qualify for exemption under section 501(c)(3) of the Code, you must establish that you are both organized and operated exclusively for one or more of the purposes described in that section. Your Articles of Incorporation satisfy the organizational test.

Despite the absence of written agreements with participating merchants, under the program as described, your activities appear to be those of a factor or middleman, bringing together buyers and sellers resulting in private benefit to both the buyer and the seller. The primary objective of a customer and the participating merchant in these arrangements is to consummate an ordinary commercial transaction through your facility. Both the buyer's and the seller's private interests are being furthered. In addition, by charging merchants a fee for your services you are engaging in an ordinary trade or business unrelated to any exempt purpose. Being operated for such a purpose is a bar to exemption pursuant to section 1.501(c)(3)-1(e)(1) of the regulations.

You are in effect serving as an agent to both the buyer and the seller by facilitating the business arrangement between the two. Since neither is a member of a recognized charitable class, this represents a non-charitable purpose that is substantial in nature and would preclude exemption under section 501(c)(3) of the Code. See Better Business Bureau v. United States and Old Dominion Box Co., Inc. v. United States, both cited above.

Furthermore, your activities bestow a direct and significant competitive advantage on those merchants who pay your sponsor's fee. They have private and confidential direct access through your web site to those consumers seeking their types of services. This is also a private benefit that is substantial in nature, and therefore, is a bar to exemption under section 501(c)(3) despite the fact that your other activities may be educational in nature. Better Business Bureau, *supra*.

Because we believe that your operations will result in substantial private benefit to the buyers and the participating merchants, because your primary activity, the bringing together of buyers and sellers, is not an activity described in section 501(c)(3) of the Code, and because you have not established that you relieve the poor and distressed or promote social welfare within the meaning of section 501(c)(3), we have concluded that you are not operated exclusively for charitable, educational or religious purposes. We, therefore, cannot recognize you as an organization exempt under that section.

NO PROTEST RECEIVED

Release to Manager, NO Determinations - Cincinnati

DATE: [REDACTED]

SURNAME [REDACTED]

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
T:EO:RA:T:3 JC  
1111 Constitution Ave. N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.  
Manager, Exempt Organizations  
Technical Group 3